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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,211	06/06/2000	Francis R. Koperda	191910-1061	9999

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SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 10/22/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,211

Applicant(s)

KOPERDA ET AL.

Examiner

Jason D Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Attached Office Action*.

DETAILED ACTION

1. In view of the Appeal Brief filed on July 28, 2003, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Priority

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must be updated and include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 19-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowcutt et al. (hereinafter Bowcutt), U.S. Patent No. 6,308,328.

5. Regarding claim 19, Bowcutt discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the steps of:

monitoring session duration of a link to a network access device and storing data related thereto [Bowcutt, col. 3, lines 2-28, col. 9, lines 17-65 and col. 19, line 63 – col. 20, line 3];

monitoring amount of data transferred to and from a network access device and storing data related thereto [Bowcutt, col. 3, lines 6-28 and col. 19, lines 5-15]; and

monitoring amount of data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Bowcutt, col. 3, lines 44-55 and col. 19, lines 33-52].

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6. Regarding claim 20, Bowcutt further discloses the step of monitoring and storing the start time of the session [Bowcutt, col.9, lines 17-65 and col. 19, line 63 – col. 20, line 3].

7. Regarding claim 21, Bowcutt further discloses the steps of subtracting the amount of lost data from the amount of transferred data to obtain an amount of actual data transferred and billing proportional to the amount of actual data transferred and session duration [Bowcutt, col. 3, lines 2-28 and col. 19, lines 53-62].

8. Regarding claim 22, Bowcutt further discloses the steps of recording the address of the network access device and of apparatus to which the network access device is linked during the session [Bowcutt, col. 6, lines 36-49].

9. Regarding claim 23, Bowcutt further discloses the step of providing a plurality of service tiers depending on maximum shared bandwidth or bit rate [Bowcutt, col. 2, lines 31-45 and col. 9, lines 17-65].

10. Regarding claim 24, Bowcutt further discloses the flexible billing structure comprises a fee determined by amount of actual data communicated during a session [Bowcutt, col. 3, lines 44-55].

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11. Regarding claim 25, Bowcutt further discloses the step of monitoring quality of service provided a subscriber determined by additionally monitoring jitter and delay [Bowcutt, col. 7, lines 14-60].

12. Regarding claim 26, Bowcutt further discloses the step of storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Bowcutt, col. 8, lines 11-25].

13. Regarding claims 27 and 28, Bowcutt further discloses the step of receiving parametric statistical data for a session of a network access device at an administration computer, wherein the parametric statistical data comprises amount of data transferred and amount of data lost [Bowcutt, col. 3, lines 44-55 and col. 19, lines 5-52].

Conclusion

14. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.

~~15. Any inquiry concerning this communication or earlier communications from the~~
examiner should be directed to Jason D Cardone whose telephone number is (703)
305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on (703) 305-9703. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Jason D Cardone
Examiner
Art Unit 2142

October 9, 2003
